IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

EDDIE HUNTER,	)	
	)	
Plaintiff	)	Civil Action No. 06-1023
	)	
vs.	)	Judge Joy Flowers Conti/
	)	Magistrate Judge Lisa
	)	Pupo Lenihan
WILLIAM SCHOUPPE, Warden of Beaver County Jail,	)	
Defendants	)	
	)	

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

RECOMMENDATION

It is recommended that the complaint be dismissed before service, pursuant to the authority granted courts by the Prison Litigation Reform Act (PLRA), for failure to state a claim upon which relief can be granted.

REPORT

Eddie Hunter ("Plaintiff"), is a pre-trial detainee at the Beaver County Jail. He has filed a pro se civil rights suit pursuant to 42 U.S.C. § 1983 against William Schouppe, the Warden of the Jail. Plaintiff has been granted in forma pauperis status to pursue this suit. Doc. 2. In the pre-printed civil rights complaint form, Plaintiff claims in full that

> Since my incarceration here in the Beaver County Jail I have not had access to a law library to research my case, and prior cases of a similar nature. I filed two grievances [which Plaintiff attached to the complaint] in regards to this but was told that there is a computer which circulates thru the jail that I could use to research my case. Since May 8th 2006 this computer was only on the pod where I'm housed twice.

> Both times only one person at a time was allowed to access the computer. So if you aren[']t computer literature [sic] its useless to you. Also the computer does not allow a person to research all prior cases, formulate or file motions or give a person anything other than basic information, which defines rules of criminal procedure in Pennsylvania.

Doc. 4 at ¶ IV.C. 2-3. Plaintiff attached to his complaint two grievances that he filed with the Jail concerning the very claims he is making herein. In one of the grievances he makes clear that he is complaining about the inability to do research on his criminal case that is pending against him. In the "Nature of Grievance" section of the form, he complains about the "failure to provide inmates with access to a law library and this prevents inmates from learning about legal ramifications which concern their charges of committment [sic]." Doc. 4 at 4. Accord Second Grievance attached (wherein he complained about the "[l]ack of legal materials to do research on my charges of committment [sic]." Id. At 5.

A. Applicable Legal Principles

In the Prison Litigation Reform Act ("PLRA"), Pub. L. No. 104-134, 110 Stat. 1321 (1996), Congress adopted major changes affecting civil rights actions brought by prisoners in an effort to curb the increasing number of frivolous and harassing law suits brought by persons in custody. See Santana v. United States, 98 F.3d 752, 755 (3d Cir. 1996). The PLRA required courts to sua sponte dismiss complaints or claims by prisoners if

they failed to state a claim. See, e.g., 28 U.S.C. § 1915(e) & § 1915A; 42 U.S.C. § 1997e; Nieves v. Dragovich, No. CIV.A.96-6525, 1997 WL 698490, at *8 (E.D. Pa. Nov. 3, 1997)("Under provisions of the Prison Litigation Reform Act codified at 28 U.S.C. §§ 1915A, 1915(e) and 42 U.S.C. S 1997e(c), the district courts are required, either on the motion of a party or sua sponte, to dismiss any claims made by an inmate that are frivolous or fail to state a claim upon which relief could be granted."), aff'd, 175 F.3d 1011 (3d Cir. 1999) (Table). Because Plaintiff is a "prisoner"[1] and has been granted IFP status, the screening provisions of 28 U.S.C. § 1915(e) apply. In addition, because Plaintiff is a "prisoner",[2] seeking to challenge "prison conditions," the screening provisions of 42 U.S.C. § 1997e applies as well. See Booth v. Churner, 206 F.3d 289, 295 (3d Cir. 2000), aff'd, 532 U.S. 731 (2001) (conditions of confinement include all cases concerning prison and hence, all cases concerning prison are subject to § 1997e). In addition,

[1] The term "prisoner" as used in Section 1915 means "any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program." 28 U.S.C. § 1915(h).

[2] 42 U.S.C. § 1997e(h) provides that prisoner "means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program."

because Plaintiff is a "prisoner",[3] seeking "redress from a governmental entity or . . . employee", i.e., Warden Schouppe of the Beaver County Jail, the screening provisions of 28 U.S.C. § 1915A apply. See Funchess v. Doe, No. 96 C 4767, 1997 WL 12785 (N.D. Ill. Jan. 10, 1997) (applying Section 1915A to inmate's claims against county jail staff as employees of a governmental entity). In performing a court's mandated function of sua sponte reviewing complaints under 28 U.S.C. § 1915(e) and 1915A, as well as under 42 U.S.C. § 1997e, to determine if the complaint fails to state a claim upon which relief can be granted, a federal district court applies the same standard applied to motions to dismiss under Federal Rule of Civil Procedure 12(b)(6). See, e.g., Anyanwutaku v. Moore, 151 F.3d 1053 (D.C. Cir. 1998); Tucker v. Angelone, 954 F. Supp. 134, 135 (E.D. Va.) ("Under 28 U.S.C. §§ 1915A, 1915(e) and 42 U.S.C. § 1997e(c) the courts are directed to dismiss any claims made by inmates that 'fail to state a claim upon which relief could be granted'. This is the familiar standard for a motion to dismiss under Fed.R.Civ.P. 12(b)(6)."), aff'd, 116 F.3d 473 (Table) (4th Cir. 1997).

In reviewing complaints as mandated by the three screening

[3]Section 1915A(c) defines the term "prisoner" as "any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program." 28 U.S.C. § 1915A(c).

provisions of the PLRA and, consequently, utilizing the standards for a 12(b)(6) motion to dismiss, the complaint must be read in the light most favorable to the Plaintiff and all well-pleaded, material allegations of fact in the complaint must be taken as true. See Estelle v. Gamble, 429 U.S. 97 (1976).

Because under Rule 12(b)(6), courts may consider, in addition to the complaint, matters of public record, orders, and exhibits attached to the complaint and other matters of which a court may take judicial notice, Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1385 n.2 (3d Cir. 1994), and because the standards for dismissal for failing to state a claim under 28 U.S.C. §§ 1915(e) and 1915A as well as under 42 U.S.C. § 1997e are the same as under a 12(b)(6) motion, the court may, under the three PLRA screening provisions, consider matters of which it may take judicial notice. See, e.g., Lloyd v. U.S., No. 99 C 3347, 1999 WL 759375, at *1 (N.D. Ill. Sept. 3, 1999) ("As the court may take judicial notice of public records without converting a motion to dismiss to a motion for summary judgment, *Henson v. CSC Credit Services*, 29 F.3d 280, 284 (7th Cir. 1994), the court will take judicial notice of court records in conducting its initial review under § 1915A.").

Furthermore, because Plaintiff is pro se, courts accord an even more liberal reading of the complaint, employing less stringent standards when considering pro se pleadings than when

judging the work product of an attorney. Haines v. Kerner, 404 U.S. 519 (1972).

Dismissal is proper under Rule 12(b)(6), and hence, under all three screening provisions of the PLRA, where the court determines that the facts as alleged by the plaintiff taken as true and viewed in a light most favorable to the plaintiff, fail to state a claim as a matter of law. See, e.g., Gould Electronics, Inc. v. U.S., 220 F.3d 169, 178 (3d Cir. 2000) ("In a Rule 12(b)(6) motion, the court evaluates the merits of the claims by accepting all allegations in the complaint as true, viewing them in the light most favorable to the plaintiffs, and determining whether they state a claim as a matter of law.").

Although Plaintiff's complaint does not specifically reference any federal law claimed to be violated by Warden Schouppe, a liberal reading of the complaint permits an inference that Plaintiff is suing Warden Schouppe for alleged violations of Plaintiff's federal constitutional right of access to the Courts. Accordingly, the court construes Plaintiff to be bringing a claim arising under the Civil Rights Act of 1871, codified at 42 U.S.C. § 1983 (Section 1983). Arpin v. Santa Clara Valley Transp. Agency, 261 F.3d 912, 925 (9th Cir. 2001)("a litigant complaining of a violation of a constitutional right does not have a direct cause of action under the United States Constitution but must utilize 42 U.S.C. § 1983."); Pauk v. Board

of Trustees of City University of New York, 654 F.2d 856 (2d Cir 1981)(where a federal statute governing civil action for deprivation of rights provides a remedy, i.e., 42 U.S.C. § 1983, an implied cause of action grounded on Constitution is not available), overruling on other grounds as recognized in, Brandman v. North Shore Guidance Center, 636 F.Supp. 877, 879 (E.D.N.Y. 1986).

To state a claim for relief under 42 U.S.C. § 1983, the Civil Rights Act, a plaintiff must meet two threshold requirements. He must allege: 1) that the asserted misconduct was committed by a person acting under color of state law; and 2) that as a result, he was deprived of rights, privileges, or immunities secured by the Constitution or laws of the United States. West v. Atkins, 487 U.S. 42 (1988). Even liberally construing the Plaintiff's complaint, the only right the complaint alleges a denial of is Plaintiff's constitutional right of access to the courts. See, e.g., Alexander v. Leone, No. Civ. 03-2163, 2005 WL 1863664, *2 (D.N.J. July 28, 2005) ("Liberally construing Plaintiff's allegations and accepting them as true, the Court reads the instant Complaint as potentially raising the following claims under 42 U.S.C. § 1983: (A) the failure to provide ... sufficient access to the prison law library, and the opening of incoming legal mail, violated Plaintiff's right of access to the courts under the First

Amendment, applicable to states through the Fourteenth Amendment").

C. Discussion

The court takes judicial notice of the dockets of the Court of Common Pleas of Beaver County. Those dockets reveal that the currently pending charges against Plaintiff, Eddie Hunter, are filed at CP-04-CR-882-2006 and involve retail theft and receiving stolen property.[4] The docket of Plaintiff's criminal case also reveals that Plaintiff has had appointed for him as counsel the Public Defender's Office in the person of Attorney William Braslawsce. Because Plaintiff has appointed counsel to represent him in the criminal proceedings, he fails to state a denial of access to courts claim as a matter of law. See, e.g., Lamp v. Iowa, 122 F.3d 1100, 1106 (8th Cir. 1997) ("For, once the State has provided a petitioner with an attorney in postconviction proceedings, it has provided him with the 'capability of bringing contemplated challenges to sentences or conditions of confinement before the courts.'") (quoting Lewis v. Casey, 518 U.S. 343, 356 (1996)); Schrier v. Halford, 60 F.3d 1309, 1313-1314 (8th Cir. 1995) (having appointed counsel is one way in which state can shoulder its burden of assuring access to the courts); Sanders

[4] The specific docket for Plaintiff's criminal case is at: http://ujsportal.pacourts.us/PublicReporting/PublicReporting.aspx?rt=1&&ct=4&dkt=200272503&arch=0&ST=9/29/2006%209:13:25%20AM

v. Rockland County Correctional Facility, No. 94 Civ. 3691, 1995 WL 479445 at *2 (S.D.N.Y. Aug. 14, 1995) ("By the appointment of counsel, plaintiff was afforded meaningful access to the courts in his trial.").

For example, in the case of Rogers v. Thomas, No. 94-4692, 1995 WL 70548 at *2 (E.D. Pa. Feb. 17, 1995), *aff'd*, 65 F.3d 165 (3d Cir. 1995) (Table), the prisoner therein claimed a denial of access to the courts as does Plaintiff herein. In Rogers, a prisoner's legal papers relating to the appeal of his criminal conviction were seized by a corrections officer. "The legal materials at issue consisted of 'legal research notes, court orders, affidavits, letters, and pleadings.'" Id. at *1. The plaintiff in Rogers was represented by counsel in his direct appeal, much like the Plaintiff herein is represented by counsel in his criminal trial proceedings. The plaintiff in Rogers claimed the confiscation of his legal papers violated his right of access to the courts. In rejecting this claim, the court held that despite the fact that the inmate's legal papers were taken by prison officials, "plaintiff was not denied access to the courts because he was represented by court-appointed counsel, during the entire pendency of the appeal to which the legal papers related. Thus, plaintiff was actually provided with, not denied, legal assistance." Rogers, 1995 WL 70548 at *2. This rule of law that providing prisoners with counsel fulfills their

right of access to the courts makes eminent sense in light of Bounds v. Smith, 430 U.S. 817 (1977), one of the landmark cases in right of access jurisprudence, which declared that inmates' right of access to the courts may be satisfied by "providing prisoners with adequate law libraries **or** adequate assistance from persons trained in the law." Id., 430 U.S. at 828 (emphasis added). Accordingly, because Plaintiff has counsel for the criminal proceedings which he wishes to conduct research on, Plaintiff's complaint fails to state a claim for denial of access to the courts as a matter of law.

Even if Plaintiff would refuse court appointed counsel, and would choose to proceed pro se in his criminal charges, the fact that he had been offered legal assistance and had refused such assistance would negate any claim of denial of access to the courts. See, e.g., Degrate v. Godwin, 84 F.3d 768, 769 (5th Cir. 1996) (*per curiam*) (where pretrial detainee was offered state appointed counsel but he subsequently rejected such counsel in order to proceed pro se, state did not violate detainee's right of access to the courts by hindering his access to a law library; "having rejected the assistance of court-appointed counsel, [detainee] Degrate had no constitutional right to access a law library in preparing the pro se defense of his criminal trial."); Love v. Summit County, 776 F.2d 908, 914 (10th Cir. 1985), cert. denied, 479 U.S. 814 (1986) (state is entitled to choose whether

it will meet its obligation to provide access to the courts by providing an adequate law library or by providing legal assistance in the form of an attorney).

As even the most liberal reading of the complaint reveals no violation of Plaintiff's constitutional rights, the complaint should be dismissed.

CONCLUSION

In accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1)(B) & (C), and Local Rule 72.1.4 B, the parties are allowed ten (10) days from the date of service to file written objections to this report. Any party opposing the objections shall have seven (7) days from the date of service of the objections to respond thereto. Failure to timely file objections may constitute a waiver of any appellate rights.

/s/Lisa Pupo Lenihan
Lisa Pupo Lenihan
U.S. Magistrate Judge

Dated: September 29, 2006

cc: The Honorable Joy Flowers Conti
United States District Judge

Eddie Hunter
Beaver County Jail
6000 Woodlawn Boulevard
Aliquippa, PA 15001